81ST CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2122

PROVIDING FOR THE REVIEW OF ORDERS OF THE FEDERAL COMMUNICATIONS COMMISSION, OF CERTAIN ORDERS OF THE SECRETARY OF AGRICULTURE MADE UNDER THE PACKERS AND STOCKYARDS ACT, AND THE PERISHABLE AGRICULTURAL COMMODITIES ACT, AND OF CERTAIN ORDERS OF THE UNITED STATES MARITIME COMMISSION

MAY 23, 1950.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOBBS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5487]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5487) to provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended, having considered the same, report favorably thereon with amendments, and recommend that the bill, as so amended, do pass.

The committee amendments are as follows:

(1) Page 2, line 17, delete "under" and insert "reviewable in accordance with the provisions of section 402 (a) of".

(2) Page 3, lines 13 through 17, delete ": *Provided*, That the venue of any proceeding to review orders now reviewable under section 402 (b) of the Communications Act of 1934, as amended, shall be in the United States Court of Appeals for the District of Columbia." and place a period after the word "Columbia" in line 13.

(3) Page 9, line 25, delete "thirty" and insert "forty-five".

(4) Page 10, line 6, delete "sixty" and insert "ninety".

PURPOSE OF AMENDMENTS

Amendments Nos. 1 and 2 are designed to remove from the scope of the legislation, proceedings for the review of orders of the Federal

Communications Commission relating to the granting or refusing of applications for radio-station-construction permits or radio-station licenses, or for the renewal or modification of existing radio-station licenses, or for the suspension of radio operator's licenses. All of these orders are now reviewable under the Communications Act of 1934, section 402 (b), by the United States Court of Appeals for the District of Columbia, and on certiorari by the Supreme Court of the United States. This existing procedure is said to be satisfactory to litigants and to the Communications Commission and the Department of Justice, and since it does not involve the cumbersome review by three judge district courts with direct appeal to the Supreme Court, which it is the purpose of the bill to cure, it is not germane to the present legislation.

Amendments Nos. 3 and 4 will enlarge the time permitted for the filing of petitions for certiorari to the Supreme Court from judgments of the Courts of Appeals on review of the orders to which the bill relates from 60 to 90 days for final judgments and from 30 to 45 days for interlocutory judgments. The amendment will promote uniformity in this respect by making applicable to these proceedings the time limitations provided for petitions for certiorari generally by section 2101 of title 28 of the United States Code.

HISTORY OF THE LEGISLATION

This bill has its origin in a request made by the late Chief Justice Stone that the Judicial Conference of the United States make a study of the procedure for the review of those administrative agency orders which were at that time subject to the procedural requirements of the Urgent Deficiency Act of 1913 with a view to recommending the enactment of legislation that would eliminate the difficulties that had developed in following that procedure. The provisions of the Urgent Deficiencies Act for review of certain agency orders by special district courts of three judges, with an appeal as of right directly to the Supreme Court, had often not only disrupted the ordinary conduct of litigation by the district courts, by requiring the services of three judges in these cases, when in ordinary litigations only one judge is needed; but, also, as Chief Justice Stone pointed out, it had forced the Supreme Court to review many cases where the questions involved were of only minor importance, but where lengthy records and extreme technicalities had added heavily to the burden of the Court. The Chief Justice suggested that the Supreme Court should be relieved of this unnecessary burden. Accordingly, in 1942, the Judicial Conference established a committee to consider the problem. This committee made a preliminary report to the Judicial Conference in 1943. At that time the committee was enlarged by consolidation with another committee on three-judge-court procedure. The consolidated committee consisted of the following members:

Chief Judge Orie L. Phillips of the Court of Appeals for the Tenth Circuit of Denver, Colo. (chairman)
Circuit Judge Armistead M. Dobie, of Virginia
Circuit Judge Evan A. Evans, of Wisconsin (now deceased)
Circuit Judge Learned Hand of New York
Circuit Judge Calvert Magruder of Massachusetts
Circuit Judge Albert B. Maris of Philadelphia
Circuit Judge Kimbrough Stone of Missouri
District Judge (now Circuit Judge) Walter C. Lindley of Illinois
Commissioner Clyde B. Aitchison of the Interstate Commerce Commission

For the next 3 years the committee worked steadily on the problem. It sat and collaborated with representatives of the agencies concerned: the Solicitor of the Department of Agriculture, the General Counsel of the Federal Communications Commission, attorneys for the United States Maritime Commission, and the Solicitor General of the United States. It prepared and discussed drafts of bills, and revised them to meet suggestions coming from many sources, including the administrative agencies and practitioners before them. It prepared successive reports with proposals of bills, which in turn were discussed by the Judicial Conference at its annual meetings in 1944, 1945, and 1946.

Finally, in 1946, the Judicial Conference recommended that specified legislation along the lines of its committees' recommendations should be enacted by the Congress. These legislative proposals were introduced as House bills in the Eightieth Congress. They were extensively discussed at hearings before the House Judiciary Committee in that Congress, and favorably reported, with amendments. In the Eighty-first Congress the unenacted parts of the legislation were reintroduced and made the subject of further extensive hearings and deliberations in the judicial conference and the agencies concerned, as well as by the Judiciary Committee. The present bill, with the amendments proposed by your committee, is a carefully considered result of all this study. It is approved by the judiciary, by the agencies concerned, by the Attorney General, and by practitioners and others interested. It is the view of your committee that with this background the legislation is the best solution possible to a most technical and troublesome problem in administrative and judicial procedure.

THE EFFECTS OF THE BILL

At present the method of review of most of the judicially reviewable orders of the agencies involved in the proposed bills (the U. S. Maritime Commission, the Secretary of Agriculture, and the Federal Communications Commission) is prescribed by many provisions scattered throughout different statutes. These provisions have a common feature, that the controversy in relation to the orders complained of is heard and decided de novo in a district court. In cases in which the action is brought by the administrative agency the case may usually be heard by a single district judge. But in many types of cases, in which a party affected seeks to restrain or set aside the order of the administrative agency as illegal, the present law requires that it shall be heard in a district court by a panel of three judges, one of whom at least shall be a circuit judge and the others of whom may be district judges. The pattern for this was established by the Urgent Deficiencies Act of 1913, and is continued by the present law (title 28, U. S. C., sec. 2284). In cases under this provision and others adopting the procedure, in which the trial in the district court is by three judges sitting en banc, there is a right of review by appeal to the Supreme Court of the United States.

The pending bill would substitute for the present mode of judicial review of the orders of the agencies to which it applies, a review by the appropriate circuit courts of appeals upon the record made before the administrative agency with further review on certiorari by the

Supreme Court in its discretion, as in most other cases coming from the courts of appeals. This is the pattern established for review of orders of the Federal Trade Commission in 1914 (15 U. S. C. 45c) and followed by other laws since then in relation to many other agencies, including the Securities and Exchange Commission, the Bituminous Coal Commission, and the National Labor Relations Board. It is the more modern method and is generally considered to be the best method for the review of orders of administrative agencies.

The proposed method of review has important advantages in simplicity and expedition over the present method. First, the submission of the cases upon the records made before the administrative agencies will avoid the making of two records, one before the agency and one before the court, and thus going over the same ground twice. Under the Administrative Procedure Act of June 11, 1946, the record before the agencies will be made in such a way that all questions for the determination of the courts on review, and the facts bearing upon them, will be presented and the rights of the parties will be fully protected. The bill has adequate provisions in section 7 (b) and (c) for the taking of evidence either by the agency or in the district court, when for one reason or another that is necessary because a suitable hearing was not held prior to initiation of the proceeding in the court of appeals.

Second, in many cases in which hearing in the district courts by panels of three judges is now required there will be a large saving of judicial time and energy. It is generally recognized that three-judge courts are not well adapted for conducting hearings. The necessity of holding conferences whenever questions arise in the course of the proceedings, as they repeatedly do in relation to such matters as the admissibility of evidence, very much slows the trial. In addition the proceeding takes the time of three judges, whereas one would be sufficient at this preliminary stage of the case. The method of review prescribed by the proposed bill would secure the collaboration of three judges at the stage where it is useful, namely, in the decision without consuming their time unnecessarily in the preceding phases of the case.

Third, the provision for review of the Supreme Court in its discretion upon certiorari, as in the review of other cases from circuit courts of appeals, will save the members of the Supreme Court from wasting their energies on cases which are not important enough to call for their attention, and enable them to concentrate more fully upon cases which require their careful consideration. By allowing certiorari, the Court will still reserve for consideration those cases in relation to administrative agencies where significant constitutional issues or substantial public interests are involved, but it will not any longer be required automatically to hear cases which are not of a nature to merit its consideration.

The mode of judicial review provided in this bill has been evolved from long study and careful consideration by all persons concerned with the difficult questions involved. It represents an important improvement in judicial procedure—one that will make for economy and expedition in the disposition of a considerable class of business of the Federal courts.

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